IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1405 of 2006
with
CIVIL APPLICATION No. 12510 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MUKESH M PATEL & ORS - Appellant(s)
Versus
STATE OF GUJARAT & ANR - Respondent(s)

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Appearance :
MR CB DASTOOR for Appellant(s) : 1 - 2.
MR SHIVANG SHUKLA, A.G.P. for Respondent(s) : 1,
MR PRABHAKAR UPADYAY for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 14/12/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

ADMIT.

Learned AGP Shri Shivang Shukla appears for respondent no. 1 and learned advocate Shri N.D. Songara appearing for learned advocate Shri Prabhakar Upadhyay appears for respondent no. 2. At the request of the learned advocates, the appeal is finally heard today.

Upon hearing the learned advocates and looking to the facts of the case, it is clear that without issuance of notice, Special Civil Application No. 9157/2006 had been decided and a final direction had been given to respondent no. 1 for recovering the amount, under the order passed in Recovery Application No. 115/2002, which had been passed in pursuance of award dated 29th May, 1998 made in Reference (LCA) No. 2112/1995.

Learned advocate Shri Dastoor appearing for the appellants has submitted that the aforestated award had been passed without hearing the appellants who are employers of Opponent no. 2. So as to ascertain whether the submission made by learned advocate Shri Dastoor is correct, Record and Proceedings from the Labour Court had been called for. Upon perusal of the record, it appears that the statement of claim made by respondent no. 2 had never been furnished to the appellants and possibly due opportunity to represent their case was not given to them.

It has been submitted by learned advocate Shri Dastoor that had notice been issued in Special Civil Application No. 9157/2005, the aforestated facts could have been placed before the learned Single

Judge and in that event, possibly, the learned Single Judge would not have given direction to respondent no. 1 for recovery of the amount referred to in the recovery certificate.

Looking to the facts of the case and upon hearing the learned advocates, we find substance in the submissions made by learned advocate Shri Dastoor, and, therefore, the direction given by the learned Single Judge to respondent no. 1 with regard to enforcement of recovery certificate dated 23rd March, 2005, whereby the amount, which is subject matter of the recovery application is to be recovered form the appellants, is quashed and set aside.

Learned advocate Shri Dastoor has submitted that the appellants would approach the Labour Court so as to initiate further proceedings for getting the award annulled. Without making any observation on the merits of the award, the appellants are permitted to take appropriate legal proceedings.

In the aforestated circumstances, the appeal is allowed. The impugned order passed by the learned Single Judge in Special Civil Application No. 9157/2006 is quashed and set aside. The appeal stands disposed of.

Direct service is permitted.

Record and proceedings shall be returned to the concerned Labour Court forthwith.

In view of disposal of the appeal, no order on Civil Application.

(ANIL R. DAVE, J.) (HARSHA DEVANI, J.)

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